I. Initial Remarks

Applicants received an Office Communication dated July 10, 2008, which asserts that, "[t]he reply filed on April 17, 2008, is not fully responsive to the prior Office Action because . . . the double patenting rejeciton [sic] has not been addressed. Applicnat [sic] has requested that the rejection be held in abeyance until there is an indication of allowable subject matter . . . [but] it is improper to request a rejection be held in abeyance." Office Communication, page 2 (citing 37 C.F.R. § 1.111). In response to this Communication, Applicants submit the following Interview Summary and remarks and respectfully direct the Office to the concurrently filed Terminal Disclaimer.

II. Interview Summary

Applicants thank the Examiner for the courtesies extended to Applicants' representative, Nikolas Uhlir, in a telephonic interview on August 5, 2008. During this interview, Applicants' representative explained that Applicants' Amendment filed on April 17, 2008, was fullly responsive, contrary to the Office's assertion that Applicants' must respond to the provisional double patenting rejection in the form of arguments or a Terminal Disclaimer.

Applicants submitted that such a requirement is premature, as the claims of the two applications at issue (the present application and U.S. Appln. No. 10/370,478) may be completely different from one another at the time otherwise allowable subject matter is indicated in either application. Applicants' representative also noted that 37 C.F.R. § 1.111 allows Applicants to request that matters of form which do not otherwise affect the examination of the claims be held in abeyance. In this regard, Applicants' representative explained that because the outstanding double patenting rejection is provisional, it is merely a matter of form

that does not otherwise impair an examiner's ability to otherwise examine the application prior to an indication of allowable subject matter. Thus, Applicants' Representative maintained that this rejection can properly be held in abeyance.

The Examiner appeared to agree with Applicants' representative, but indicated that her supervisor, Examiner Woodward, was requiring the examiners in art unit 1615 to consider unresponsive any response that requests the Office to hold a claim rejection in abeyance. The Examiner also suggested that Applicants' representative contact Examiner Woodward directly to discuss the issue. Applicants' Representative agreed to take the Examiner's comments under advisement.

III. Remarks

In an Office Action dated January 7, 2008, the Office rejected various combinations of the pending claims under 35 U.S.C. §§ 112, 102(b), and 103(a). Applicants response to those rejections is set forth fully in the Amendment filed April 17, 2008, which is incorporated herein by reference. Accordingly, Applicants prior response with respect to the outstanding 35 U.S.C. §§ 112, 102(b), and 103(a) rejections is not repeated herein.

In the January 7, 2008, Office Action, the Office also provisionally rejected claims 1-15, 18, 26-30, 33-39, 41-44, 70, 77-102, 110, and 114-140 under the doctrine of non-statutory obviousness-type double patenting as being unpatentable over claims 1-121 of co-pending U.S. Application No. 10/670,478. *See* Office Action dated January 7, 2008, pages 10 and 11. Applicants responded to this provisional rejection by asking that the rejection be held in abeyance until there is an indication of allowable subject matter. As stated above in section I, the Office considers this Request to render the Amendment filed April 17, 2008, not fully responsive to the January 7, 2008, Office Action.

In response, Applicants respectfully disagree with the rationale presented in the Communication, at least because the rejection at issue is a provisional double patenting rejection, *i.e.*, one based on the claims of the current application and a co-pending application *as* they presently stand, which is not necessarily the form those claims will be in when they are allowed/issued by the Office. As a result, Applicants respectfully submit that the requirement of a full response to a provisional double patenting rejection is premature until there is an indication of otherwise allowable subject matter in at least one of the applications in question. Moreover, Applicants respectfully submit that the existence of a provisional double patenting rejection does not impair an examiner's ability to otherwise advance the prosecution of an application until there is an indication of otherwise allowable subject matter. Thus, until there is an indication of otherwise allowable subject matter, Applicants respectfully submit that applicants can properly request the Office to hold a provisional double patenting rejection in abeyance under 37 C.F.R. § 1.111, or at a minimum commit to filing a Terminal Disclaimer at the time otherwise allowable subject matter is identified in the event the Examiner still deems the rejection applicable. Moreover, Applicants' representatives note that it has been common practice and generally accepted by examiners to ask that provisional double patenting rejections be held in abeyance.

Nonetheless, in an effort to advance the prosecution of this application, Applicants file a Terminal Disclaimer concurrently with this Response. In view of this Terminal Disclaimer, the provisional obviousness-type double patenting rejection and the Office's objection to the Amendment filed April 17, 2008, are rendered moot and should be withdrawn.

IV. Conclusion

In view of the above comments, the concurrently filed Terminal Disclaimer, and the Amendment filed April 17, 2008, Applicants request reconsideration of this Applicant and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this paper, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 8, 2008

By: /Nikolas J. Uhlir/
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